

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9110 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?  
1 to 5 No
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DAHYABHAI RAGHABHAI TAILOR

Versus

STATE OF GUJARAT

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Appearance:

MR YN OZA for Petitioners  
Mrs. S.D. Talati, AGP for Respondent No. 1  
MR VH DESAI for Respondent No. 2  
MR DR DHIMAR for Respondent No. 3  
DS AFF.NOT FILED (R) for Respondent No. 4

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CORAM : MR.JUSTICE R.BALIA.

Date of decision: 07/09/98

ORAL JUDGEMENT

1. The petitioner has filed this petition for directing the Municipal Corporation - respondent No.1 and 2 to remove the alleged encroachment of public street through which they have access to their land within the jurisdiction of Municipal Council, Bardoli. It is the

case of the petitioners that respondents Nos. 3 (a) to 3(h) have been given licence by respondent Municipal Corporation for carrying on business on public street which is abutting to the land owned by the petitioners whereas respondents No. 4(a) to 4(c) are carrying on their business on the public street without any sanction from the municipality. The petitioners are claiming ownership of Final Plot No. 246/1 adjoining to the alleged public street. The Corporation in its reply has stated that Bardoli Nagar Panchayat in its meeting dated 23.6.1981 by resolution bearing No. 17 decided to give permission to number of persons to put up cabins on open space to do business. It is also stated that the cabins are constructed by respondents No. 3(a) to 3(h) and 4(a) to (c) about 17 years back and, there is unexplained and inordinate delay on the part of the petitioners in filing the present petition. In para 7 of the reply affidavit, it has been stated that permission was granted to put up cabins on the open space and the said decision of the Municipality has not been challenged till today by any person. The averment has been made that all the cabins are situated on open space and the said land does not belong to the present petitioners.

2. Learned counsel for the petitioners states that there is no specific denial of the fact that the cabins are put on the public street and mere statement that the cabins is situated on open space does not militate against assertions made in the petition. The fact that they are situated on public street must be deemed to have been admitted by Corporation.

3. Learned counsel for the respondent No.1 made a statement at bar that no allotment has been made on space covered by public street. However, if any encroachment have been made on public street, on proper application being made, the Corporation shall, as it is duty bound, look into it and remove encroachment from public street if any found to be there.

4. The respondents 3(a) to (h) and 4(a) to (c) have stated in their reply affidavit that respondents No. 3(a) to (h) and 4(a) to (c) have not put any illegal cabins on the public street but respondent No.2 Nagarpalika has permitted them to carry on their business in the cabin for which money is recovered by the Municipality. Respondents 3(a) to (h) and 4(a) to (c) are not aware that the land over which cabins are constructed is public street.

5. From the aforesaid assertion, it is clear that there is a disput about the fact which needs an inquiry whether there is a public street and the same is encroached by putting on cabins under the permission of the Municipality or without its permission. Further question which also needs to be considered in the light is that if the encroachment is on the public street and whether the same is with the permission of the Corporation, whether the Corporation has any jurisdiction

to grant permission to construct or occupy any part of the public street, over every inch of which every person has a right to pass and re-pass without any hindrance.

6. As I have noticed above, there exist a dispute about the fact which needs to be enquired into. As per statement of learned counsel for the respondent Municipal Corporation, on establishing that open space in question is part of public street, the Corporation will be removing such encroachment, no present cause of grievance survive against the Corporation inasmuch it has undertaken to enquire into grievance and take remedial measures for removing obstruction from public street, if it is so found. The petitioners can thereafter prosecute the remedies by way of approaching appropriate authorities under the Municipalities Act or other provisions of the law to ventilate their rights in respect of public lane and to keep the same free from encroachment as a public lane by removing the same in case Corporation fails to redress their grievance. It is expected that the Municipal Corporation shall act with promptitude in enquiring into complaint about encroachment or shortening of public street and remedying the same if found to be true.

7. Petition therefore is dismissed with liberty to petitioner to prosecute alternative remedies as are available to them in law Rule is discharged. There shall be no order as to costs.

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p.n.nair

